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MAY 18 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBefore the
Federal Communications Commission

Washington, D.C. 20554

In re Applications of)

GAF BROADCASTING COMPANY, INC.,)

For Renewal of License of Station)
WNCN (FM), New York, New York)CLASS ENTERTAINMENT AND)
COMMUNICATIONS, L.P.)

THE FIDELIO GROUP, INC.,)

For a Construction Permit for a New FM Station)
on 104.3 MHz at New York, New York)MM Docket No 93-54 /File No.
BRH-910201WI.File No.
BPH-910430MFFile No.
BPH-910502MQTo: The Honorable Joseph Chachkin
Administrative Law JudgeMOTION FOR LEAVE TO FILE
CONSOLIDATED REPLY TO OPPOSITIONS TO

LISTENERS' GUILD, INC. (hereinafter "Guild"), by its attorney, hereby respectfully moves, pursuant to 47 C.F.R. § 1.294(d) (1992),¹ for leave to file the annexed *Consolidated Reply to Oppositions to Petition for Intervention*.²

The Guild's *Consolidated Reply* does little more than make reference to the Guild's replies³ to oppositions to other pleadings to which reference had been made in the original *Petition for Intervention*, in one instance repeating at length a paragraph from one of those other replies. Since the Guild's other replies were fully authorized under the Commission's Rules, the matters pleaded therein will, in any event, be part of the record of this proceeding. There is no reason why those pleadings should not also be considered in the resolution of the Guild's *Petition for Intervention*.

The Guild respectfully submits that the filing of the *Consolidated Reply* would serve the public interest by assisting in the orderly and informed

By Order, FCC 93M-245, released May 11, 1993, at 2 n.1, the Presiding Judge ruled that replies to petitions to intervention are not authorized by 47 C.F.R. § 1.294 (c) (1-4) (1992), thus requiring a separate motion for leave to file a reply.

2. In fact, the *Consolidated Reply to Oppositions to Petition for Intervention* was filed and served on May 17, 1993, the date to which the Presiding Judge's Order, FCC 93M-245, had extended the Guild's filing deadline. The Guild's counsel had been advised orally by the Presiding Judge's chambers that its *Motion to Consolidate Replies and For Extension of Time* had been granted, but did not become aware of the ruling in said Order requiring a motion for leave to file a reply until after the *Consolidated Reply* had already been filed and served. See the accompanying *Motion for Leave to File Motion Out of Time*.

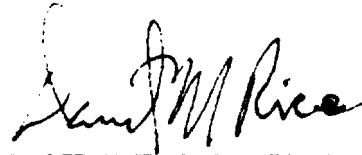
Since the instant *Motion* is being made one day after the (extended) deadline for filing the Guild's *Consolidated Reply*, that pleading is annexed in precisely the form in which it was filed and served on the deadline date. Consequently, notwithstanding the Presiding Judge's prior ruling on the matter, the annexed *Consolidated Reply* recites that it is authorized by 47 C.F.R. § 1.45(c) — or, alternatively, by 47 C.F.R. § 1.294(c)(1).

3. These are the Guild's *Consolidated Reply to Oppositions to Motion to Enlarge Issues* and its *Consolidated Reply to Oppositions to Petition for Reconsideration*, both filed May 17, 1993.

adjudication of this proceeding and would not prejudice any party hereto.
Accordingly, good cause exists for granting the instant *Motion*.

Dated: May 18, 1993

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David M. Rice". The signature is written in dark ink and is positioned above a horizontal line.

David M. Rice

One Old Country Road
Carle Place, New York 11514
(516) 747-7979

Attorney for Listeners' Guild, Inc.

CERTIFICATE OF SERVICE

I, **DAVID M. RICE**, hereby certify that the foregoing "MOTION FOR LEAVE TO FILE CONSOLIDATED REPLY TO OPPOSITIONS TO PETITION FOR INTERVENTION" was served this 18th day of May, 1993, by mailing a true copy thereof by United States first class mail, postage prepaid, to each of the following:

The Honorable Joseph Chachkin
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Federal Communications Commission
2000 L Street, N.W. — Room 226
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1966). In the absence of such other private parties to serve as advocates against GAF, the participation of the Guild herein is now more crucial than ever.

Petitioner respectfully submits that, as a party in interest in this proceeding, it is entitled to intervene herein pursuant to 47 C.F.R. § 1.223 (a). It is further submitted that the Guild's long history of involvement in representing the rights of listeners of WNCN(FM) uniquely qualifies the Guild to assist the Commission, through participation as a party herein, in the determination of the hearing issues — both those specified in the *Hearing Designation Order* and those raised in the Guild's *Motion to Enlarge Issues*. Accordingly, intervention herein also would be warranted pursuant to 47 C.F.R. § 1.223 (b).

Dated: May 17, 1993

Respectfully submitted.

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THE FIDELIO GROUP, INC.,)

For a Construction Permit for a New FM Station)
on 104.3 MHz at New York, New York)
.....)

MM Docket No 93-54

File No.
BRH-910201W1.

File No.
BPH-910430ME

File No.
BPH-910502MQ

To: The Honorable Joseph Chachkin
Administrative Law Judge

**CONSOLIDATED REPLY TO OPPOSITIONS TO
PETITION FOR INTERVENTION**

LISTENERS' GUILD, INC. (hereinafter "Guild"). by its attorney, hereby

captioned hearing proceeding designated by the *Hearing Designation Order*, 8 FCC Rcd 1742 (1993) ("HDO").

The Guild's *Consolidated Reply to Oppositions to Motion to Enlarge Issues* and its *Consolidated Reply to Oppositions to Petition for Reconsideration* — both of which are being filed simultaneously herewith and are hereby incorporated by reference herein — amply demonstrate that the Guild has an interest in this hearing proceeding, both with respect to existing issues and with those it proposes be added. Moreover, the Guild is well able to contribute to the just and efficient adjudication of all of those issues.

GAF's references to past renewal proceedings, *GAF Opposition* at 2-3, fails to take into account significant differences between the facts and circumstances of those cases, all of which differed greatly from those now pertaining. The outcome of those cases cannot be controlling here.

Finally, the Guild notes with concern the most recent developments in this hearing proceeding, including the dismissal of one of the competing applications as well as the proposed withdrawal of the other under circumstances which the Guild believes have largely been created by the unfairness of the HDO in forcing the competing applicants¹ to proceed, at considerable cost, well in advance of the ultimate determinations as to whether issues will be designated against GAF (as a result of actions of the D.C. Circuit and/or the EEO Branch). This atmosphere of inhospitality to the public, as well as to competing applicants, recalls the era that preceded *Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir.

CERTIFICATE OF SERVICE

I, DAVID M. RICE, hereby certify that the foregoing "CONSOLIDATED REPLY TO OPPOSITIONS TO PETITION FOR INTERVENTION" was served this 17th day of May, 1993, by mailing a true copy thereof by United States first class mail, postage prepaid, to each of the following:

The Honorable Joseph Chachkin
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Federal Communications Commission
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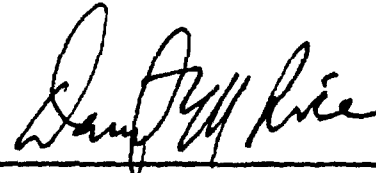
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A handwritten signature in cursive script, appearing to read "David M. Rice", written over a horizontal line.

David M. Rice